NOTES OF CASES.

Animals—Liability for Injury by Vicious Horse Hired to Another. —In Stapleton *v.* Butensky, 177 N. Y. Supp. 18, the Supreme Court of New York held that where the owner of a horse hired it for delivery horse, the fact of the bailment will not, where the animal was vicious and without warning bit a boy, who was proceeding on the sidewalk, relieve the owner of liability.

The court said: "Although McGuire was not in the employ of the owners of the horse, it has been clearly intimated, if not decided, in some cases, that the owner of a dog or horse is chargeable with knowledge of his vicious propensities manifested to one in whose custody the owner has placed the animal (Earl *v.* Van Alstine, 8 Barb. 630; Soronen *v.* Pustau, 112 App. Div. 437, 98 N. Y. Supp. 431; 3 Corp. Juris, sec. 328, and cases cited); but it is not necessary to decide that point of law, for in the case at bar the jury were warranted in inferring that a horse thus manifesting this vicious propensity would also manifest it about the stable and on the occasions when he was under the observation of the owners or their servants, and in the exercise of proper care they would have discovered it (Perrotta *v.* Picciano, 186 App. Div. 781, 175 N. Y. Supp. 16; Turner *v.* Craighead, 83 Hun, 112, 31 N. Y. Supp. 369, affirmed on Gen. Term opinion 155 N. Y. 631, 49 N. E. 1105; Harris *v.* Carstens Packing Co., 43 Wash. 647, 86 Pac. 1125, 6 L. R. A. [N. S.] 1164; Emmons *v.* Stevane, 77 N. J. Law, 570-573, 73 Atl. 544, 24 L. R. A. [N. S.] 458, 18 Ann. Cas. 812; 1 R. C. 1091, sec. 34; 3 Corpus Juris, secs. 318, 327, and cases cited).

"If, with knowledge of the vicious propensity of the horse, the owners let the use of the horse to McGuire during the hours of each week-day as stated, I think the bailment did not relieve them from liability. The authorities cited, holding the bailee only in such case liable for trespass by an animal, are not in point. The owner would be liable to the bailee, if not warned (Talmage *v.* Mills, 80 App. Div. 382, 80 N. Y. Supp. 637; Emmons *v.* Stevane, supra), and I fail to see why, on principle, he would not remain liable to third parties on the theory that the horse was too dangerous for the purpose for which the horse was let, or of negligence in not notifying the bailee and equipping the horse with a muzzle or other appliance to prevent his biting (see Mahoney *v.* Dwyer, 84 Hun, 348, 32 N. Y. Supp. 346; Mills *v.* Burke, 59 App. Div. 39, 69 N. Y. Supp. 96; Hammond *v.* Melton, 42 Ill. App. 186; Farber *v.* Roginsky, 123 App. Div. 38, 107 N. Y. Supp. 755; Moynahan *v.* Wheeler, 117 N. Y. 285, 22 N. E. 702; Bell *v.* Leslie, 24 Mo. App. 661). Counsel for the owner cites Shearman & Redfield on the Law of Neg. (6th Ed.), vol. 8, § 635, as authority for his contention that the bailor for hire of a vicious horse, known to him to

be vicious, is not liable for injuries inflicted by the horse while in the custody of the bailee; but the authorities cited by the learned author for a general statement in the text claimed to be authority for such contention merely hold that the bailor is not liable for the consequences of the negligent management of the horse by the bailee, and other parts of the section and other authorities therein cited indicate that such is not the rule where the injuries result from the known viciousness of the animal.

"The liability of the appellant company, however, if it be liable, must be predicated upon another ground. I am of the opinion that its liability depends upon whether it is chargeable with the notice and knowledge its servant McGuire had of the vicious propensity of the horse. It is perfectly clear on the evidence that the relationship of master and servant existed between McGuire and the company, and that in driving the horse in making deliveries and in returning therefrom, and in leaving the horse in the street unattended, McGuire was acting as the servant of the company, and that it would be answerable to anyone sustaining injuries or damages by reason of McGuire's negligence. Howard *v.* Ludwig, 171 N. Y. 507, 64 N. E. 172; Baldwin *v.* Abraham, 57 App. Div. 67, 67 N. Y. Supp. 1079, affirmed 171 N. Y. 677, 64 N. E. 1118; Miller *v.* North Hudson Contracting Co., 166 App. Div. 348, 152 N. Y., Supp. 22, affirmed 222 N. Y. 551, 118 N. E. 1068; Gorney *v.* City of N. Y., 102 App. Div. 259, 92 N. Y. Supp. 451; Waters *v.* Pioneer Fuel Co., 52 Minn. 474, 55 N. W. 52, 38 Am. St. Rep. 564; Postal Tel. Co. *v.* Murrell, 180 Ky. 52, 201 S. W. 462, L. R. A. 1918D, 357; Burns *v.* Michigan Paint Co., 152 Mich. 613, 116 N. W. 182, 16 L. R. A. (N. S.) 816. McGuire was also in the company's employ and its servant when, according to the testimony on behalf of the plaintiff, he was informed of the vicious propensity of the horse manifested on former occasions. There can be no doubt, I think, but that the wagon and the horse, as well as McGuire, were in the employ of the company, and were being used in the performance of its business, and that if any one lawfully upon or near the wagon sustained injuries through its being negligently unsafe or out of repair the company would be liable. Green *v.* McMullon, Snare & Triest, Inc., 177 App. Div. 771, 164 N. Y. Supp. 948."

Arrest—Unlawful Arrest—Order from Superior as Defense.—In Grau *v.* Forge, 183 Ky. 521, 209 S. W. 369, 3 A. L. R. 642, the court said: "In support of the contention it is urged that an inferior police officer is bound to obey the orders and directions of his superior, and that in doing so he is not amenable to the person arrested, although the arrest was wrongful and without warrant of law; and this conclusion is sought to be drawn by analogy from